

AMENDED IN ASSEMBLY JUNE 2, 2014

AMENDED IN SENATE MAY 5, 2014

AMENDED IN SENATE APRIL 9, 2014

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 962

Introduced by Senator Leno
(Coauthors: Senators Hancock, Pavley, and Wolk)
(Principal coauthor: Assembly Member Skinner)

February 6, 2014

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 962, as amended, Leno. ~~Advanced mobile communications devices. Smart phones.~~

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any ~~advanced mobile communications device, commonly known as a smartphone, that is manufactured and sold in California on or after July 1, 2015; smartphone, as defined, that is manufactured on or after July 1, 2015, and sold in California after that date,~~ include a technological solution, which may consist of software, hardware, or both software and hardware, that can render inoperable the essential features of the device, *features*, as defined, *of the smartphone* to an unauthorized user when the ~~device~~ *smartphone* is not in the possession of the rightful owner. The bill would require that the technological solution be able to withstand a hard reset, as defined, and when enabled, prevent reactivation of the ~~device~~

smartphone on a wireless network except by the rightful owner or his or her authorized designee. The bill would make these requirements inapplicable when the ~~device~~ *smartphone* is resold in California on the secondhand market or is consigned and held as collateral on a loan. The bill would prohibit the sale of ~~an advanced mobile communications device in California~~ *a smartphone that is manufactured on or after July 1, 2015, and sold in California after that date*, unless, during the ~~activation and registration process, the device's default setting prompts~~ *initial device set-up process, the smartphone's default setting is to prompt* the user to enable the technological solution. The bill would authorize the rightful owner to affirmatively elect to disable the technological solution ~~at the point of sale, during the activation and registration process, or anytime thereafter.~~ *anytime*. The bill would make a *knowing* violation of the bill's requirements *by a retail entity* subject to a civil penalty of not less than \$500, nor more than \$2,500, for each violation. *The bill would limit an enforcement action to being brought by the Attorney General, a district attorney, or city attorney, and would prohibit any private right of action to enforce the bill's requirements.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) According to the Federal Communications Commission,
- 4 smartphone thefts now account for 30 to 40 percent of robberies
- 5 in many major cities across the country. Many of these robberies
- 6 often turn violent with some resulting in the loss of life.
- 7 (b) Consumer Reports projects that 1.6 million Americans were
- 8 victimized for their smartphones in 2012.
- 9 (c) According to the New York Times, 113 smartphones are
- 10 lost or stolen every minute in the United States.
- 11 (d) According to the Office of the District Attorney for the City
- 12 and County of San Francisco, in 2012, more than 50 percent of all
- 13 robberies in San Francisco involved the theft of a mobile
- 14 communications device.
- 15 (e) Thefts of smartphones in Los Angeles increased 12 percent
- 16 in 2012, according to the Los Angeles Police Department.

1 (f) According to press reports, the international trafficking of
2 stolen smartphones by organized criminal organizations has grown
3 exponentially in recent years because of how profitable the trade
4 has become.

5 ~~(g) Replacement of lost and stolen mobile communications~~
6 ~~devices was an estimated thirty-billion-dollar (\$30,000,000,000)~~
7 ~~business in 2012 according to studies conducted by mobile~~
8 ~~communications security experts. Additionally, industry~~
9 ~~publications indicate that the four largest providers of commercial~~
10 ~~mobile radio services made an estimated seven billion eight~~
11 ~~hundred million dollars (\$7,800,000,000) from theft and loss~~
12 ~~insurance products in 2013.~~

13 ~~(h) Technological solutions that render stolen mobile~~
14 ~~communications devices useless already exist, but the industry has~~
15 ~~been slow to adopt them.~~

16 ~~(i)~~
17 (g) In order to be effective, ~~these~~ *antitheft* technological
18 solutions need to be ubiquitous, as thieves cannot distinguish
19 between those mobile communications devices that have the
20 solutions enabled and those that do not. As a result, the
21 technological solution should be able to withstand a hard reset or
22 operating system downgrade, ~~and be enabled by default, with~~
23 ~~consumers being given~~ *come preequipped, and the default setting*
24 *of the solution shall be to prompt the user to enable the solution*
25 *during the initial device set up. Consumers should have the option*
26 *to affirmatively elect to disable this protection.*

27 ~~(j) Manufactures of advanced mobile communications devices~~
28 ~~and commercial mobile radio service providers have a~~
29 ~~responsibility to ensure their customers are not targeted as a result~~
30 ~~of purchasing their products and services.~~

31 ~~(k) It is the intent of the Legislature to require all smartphones~~
32 ~~offered for sale in California to come with a technological solution~~
33 ~~enabled, in order to deter theft and protect consumers.~~

34 SEC. 2. Section 22761 is added to the Business and Professions
35 Code, to read:

36 22761. (a) For purposes of this section, the following terms
37 have the following meanings:

38 (1) ~~“Advanced mobile communications device” means an~~
39 ~~electronic device that is regularly hand held when operated that~~
40 ~~enables the user to engage in voice communications using mobile~~

1 telephony service, Voice over Internet Protocol, or Internet Protocol
2 enabled service, as those terms are defined in Sections 224.4 and
3 239 of the Public Utilities Code, and to connect to the Internet,
4 and is limited to what are commonly known as smartphones.

5 (2) ~~“Commercial mobile radio service” means “commercial~~
6 ~~mobile service,” as defined in subsection (d) of Section 332 of~~
7 ~~Title 47 of the United States Code and as further specified by the~~
8 ~~Federal Communications Commission in Parts 20, 22, 24, and 25~~
9 ~~of Title 47 of the Code of Federal Regulations, and includes~~
10 ~~“mobile satellite telephone service” and “mobile telephony~~
11 ~~service,” as those terms are defined in Section 224.4 of the Public~~
12 ~~Utilities Code.~~

13 (1) (A) *“Smartphone” means a cellular radio telephone or*
14 *other mobile voice communications handset device that includes*
15 *all of the following features:*

- 16 (i) *Utilizes a mobile operating system.*
- 17 (ii) *Possesses advanced computing capability.*
- 18 (iii) *Has wireless network connectivity.*
- 19 (iv) *Is capable of operating on a long-term evolution network*
20 *and successor wireless data network communication standards.*

21 (B) *A smartphone may possess, but is not limited to, the*
22 *following capabilities:*

- 23 (i) *Built-in mobile software applications.*
- 24 (ii) *Internet access.*
- 25 (iii) *Digital voice service.*
- 26 (iv) *Text messaging.*
- 27 (v) *The ability to send and receive electronic mail.*
- 28 (vi) *Internet Web site browsing.*

29 (C) *A “smartphone” does not include a radio cellular telephone*
30 *commonly referred to as a “feature” or “messaging” telephone,*
31 *a laptop, a tablet device, or a device that only has electronic*
32 *reading capability.*

33 (3)
34 (2) ~~“Essential features” of an advanced mobile communications~~
35 ~~device a smartphone~~ *include the ability to use the device for voice*
36 *communications and the ability to browse the Internet, including*
37 *the ability to access and use mobile software applications*
38 *commonly known as “apps.” “Essential features” does not include*
39 *any functionality needed for the operation of the technological*
40 *solution.*

1 ~~(4)~~

2 ~~(3)~~ “Hard reset” means the restoration of ~~an advanced mobile~~
3 ~~communications device~~ *a smartphone* to the state it was in when
4 it left the factory, and refers to any act of returning a ~~device~~
5 *smartphone* to that state, including processes commonly termed a
6 factory reset or master reset.

7 ~~(5)~~

8 ~~(4)~~ “Sold in California” means that the ~~advanced mobile~~
9 ~~communications device~~ *smartphone* is sold at retail from a location
10 within the state, or the ~~advanced mobile communications device~~
11 *smartphone* is sold and shipped to an end-use consumer at an
12 address within the state. “Sold in California” does not include a
13 ~~device~~ *smartphone* that is resold in the state on the secondhand
14 market or that is consigned and held as collateral on a loan.

15 ~~(b) (1) Any advanced mobile communications device that is~~
16 ~~manufactured and sold in California on or after July 1, 2015, shall~~
17 ~~include a technological solution that can render the essential~~
18 ~~features of the device inoperable to an unauthorized user when the~~
19 ~~device~~ *smartphone that is manufactured on or after July 1, 2015,*
20 *and sold in California after that date, shall include a technological*
21 *solution, to be provided by the manufacturer or operating system*
22 *provider, that can render the essential features of the smartphone*
23 *inoperable to an unauthorized user when the smartphone is not*
24 *in the possession of the rightful owner. The technological solution*
25 *shall be reversible, so that if the rightful owner obtains possession*
26 *of the* ~~device~~ *smartphone* ~~after the essential features of the~~ ~~device~~
27 *smartphone* ~~have been rendered inoperable, the operation of those~~
28 ~~essential features can be restored by the rightful owner or his or~~
29 ~~her authorized designee. A technological solution may consist of~~
30 ~~software, hardware, or a combination of both software and~~
31 ~~hardware, but shall be able to withstand a hard reset, and when~~
32 ~~enabled, shall prevent reactivation of the~~ *device* *smartphone* ~~on a~~
33 ~~wireless network except by the rightful owner or his or her~~
34 ~~authorized designee. No advanced mobile communications device~~
35 *smartphone that is manufactured on or after July 1, 2015, may be*
36 *sold in California after that date unless, during the activation and*
37 *registration process, the device’s default setting prompts initial*
38 *device set-up process, the smartphone’s default setting is to prompt*
39 *the user to enable the technological solution.*

(2) The “essential features” that are required to be rendered inoperable pursuant to this subdivision do not include the ability of ~~a device~~ *the smartphone* to access emergency services by a voice call or text to the numerals ~~“911” and “911,”~~ the ability of a device to receive wireless emergency alerts and ~~warnings.~~ *warnings, and the ability to call an emergency number predesignated by the owner.*

(3) The rightful owner of ~~an advanced mobile communications device~~ *a smartphone* may affirmatively elect to disable the technological solution at the point of sale, ~~during the activation and registration process, or anytime thereafter.~~ *anytime.* However, the physical acts necessary to disable the technological solution may only be performed by the end-use consumer or a person specifically selected by the end-use consumer to disable the technological solution.

(c) A ~~person or retail entity selling an advanced communications device~~ *that knowingly sells a smartphone* in California in violation of subdivision (b) ~~shall~~ *may* be subject to a civil penalty of not less than five hundred dollars (\$500), nor more than two thousand five hundred dollars (\$2,500), per device sold in California. *A suit to enforce this section may only be brought by the Attorney General, a district attorney, or a city attorney. There is no private right of action to enforce this section.*

(d) *The seller of a smartphone, its employees, and its agents, are not liable to any person for civil damages resulting from, or caused by, failure of a technological solution, including any hack or other third-party circumvention of the technological solution. A failure due to hacking or other third-party circumvention may be considered a violation for purposes of subdivision (c), only if, at the time of sale, the seller had received notification from the manufacturer that the failure existed and that it cannot be remedied by a patch or other technological solution.*

~~(d)~~

(e) Any request by a government agency to interrupt communications service utilizing a technological solution required by this section is subject to Section 7908 of the Public Utilities Code.

(f) *Nothing in this section prohibits a network operator, device manufacturer, or operating system provider from offering a technological solution or other service in addition to the*

1 *technological solution required to be provided by the device*
2 *manufacturer or operating system provider pursuant subdivision*
3 *(b).*

4 ~~(e)~~

5 (g) Nothing in this section requires a technological solution that
6 is incompatible with, or renders it impossible to comply with,
7 obligations under state and federal law and regulation related to
8 any of the following:

9 (1) The provision of emergency services through the 911 system,
10 including text to 911, bounce-back messages, and location accuracy
11 requirements.

12 (2) Participation in the wireless emergency alert system.

13 (3) Participation in state and local emergency alert and public
14 safety warning systems.